

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ARNOLD & ITKIN LLP

Plaintiff,

v.

DISCOVER BANK and ANTHONY COLON

Defendants.

)
)
)
)
)
)
)
)
)
)
)

Case No. 4:24-cv-00789

**PLAINTIFF’S REQUEST FOR CLERK’S ENTRY OF DEFAULT
AGAINST DEFENDANT ANTHONY COLON**

Plaintiff Arnold & Itkin LLP respectfully asks the Clerk of Court to enter a default in this action against Defendant Anthony Colon, under Rule 55(a) of the federal rules of Civil Procedure for failure to answer Plaintiff’s Summons and Second Amended Complaint.

1. Plaintiff filed this personal injury action in state court in the 125th Judicial District Court for Harris County, Texas. The action was removed to this Court on March 4, 2024. *See* (Doc. # 1).

2. Plaintiff’s original state-court petition asserts claims for fraud under Texas law against Anthony Colon.

3. On February 14, 2024, Plaintiff requested a citation for his state-court case to Anthony Colon be issued. *See* Ex. 1: Request for Citation.

4. Also on February 14, 2024, a citation to Anthony Colon was issued. *See* Ex. 2: Citation.

5. Plaintiff attempted to personally serve the citation and other documents related to this case on Plaintiff Anthony Colon on 12 different occasions at 8 different addresses. *See Ex. 3: Affidavits of Non-Service.*

6. Plaintiff then sent copies of the citation, Plaintiff's original petition, and Notice of Removal to each known address of Anthony Colon via certified mail. *See Ex. 4: Certified Mail Receipts.* As explained by the Federal Rules of Civil Procedure, service may be perfected upon a Defendant by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." Fed. R. Civ. P. 4(e)(1). "Unless the citation or court order otherwise directs, the citation must be served by mailing to the defendant by registered or certified mail, return receipt requested, a copy of the citation and petition." Tex. R. Civ. P. 106(a)(2). Accordingly, Plaintiff has perfected service on Defendant Anthony Colon.

7. To date, Defendant Anthony Colon has not filed an answer to Plaintiff's petition, nor has he otherwise appeared in this case.

8. Plaintiff Arnold & Itkin has verified that Defendant Anthony Colon is not currently serving in the military. *See Ex. 5: SCRA Colon Printout; also Ex. 6: Declaration.*

7. Under Rule 55(a) of the Federal Rules of civil Procedure, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

8. As shown by the attached certified mail receipts, Defendant Anthony Colon has been properly served but has failed to answer or otherwise defend against this action. Accordingly, Plaintiff asks the Clerk of Court to enter default against Anthony Colon.

Respectfully submitted,

ARNOLD & ITKIN LLP

/s/ Alec Paradowski

Kurt Arnold

Tex. Bar No.

karnold@arnolditkin.com

Alec Paradowski

Tex. Bar No. 24124773

aparadowski@arnolditkin.com

6009 Memorial Drive

Houston, Texas 77007

Tel: 713.222.3800

Fax: 713.222.3850

e-service@arnolditkin.com

rolandteam@arnolditkin.com

Attorneys for Plaintiff Arnold & Itkin LLP

CERTIFICATE OF SERVICE

I certify that a copy of this pleading was served upon all counsel of record this 5th day of November 2024 by e-filing it into the CM/ECF system, which will automatically deliver a copy to all counsel. Additionally, I certify that on this 5th day of November 2024, a copy of this motion, the Declaration of attorney Alec Paradowski, and the accompanying proposed order were served by U.S. mail, postage prepaid and properly addressed on Anthony Colon at the following addresses:

1316 Greenridge Ave.
Lithonia, GA 30058

2216 Medlock Ln.
McDonough, GA 30253

6244 Redan Overlook
Lithonia, GA 30058

219 Maple St.
Atlanta, GA 30314

5208 Stratford Cir.
Morrow, GA 30260

5203 River Walk Ct., Apt. F
Atlanta, GA 30349

1683 Kenmore St. SW
Atlanta, GA 30311

5771 Rock Rd.
Union City, GA 30291

/s/ Alec Paradowski

Alec Paradowski